



Paper No.

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**COPY MAILED****JUL 21 2004****OFFICE OF PETITIONS**

In re Application of :  
Kim et al. :  
Application No. 10/777,852 : DECISION ON PETITION  
Filed: February 13, 2004 :  
Attorney Docket No. 8733.446.10-US :

This is a decision on the petition filed June 10, 2004, requesting that the Office consider Figures 2A-2C, 3B, 7A and 7B as deposited on February 13, 2004, with the original application papers.

The application was filed on February 13, 2004. However, on May 10, 2004, the Office mailed a "Notice of Omitted Items" stating that the application had been accorded a filing date of February 13, 2004; however, figures 2A-2C, 3B, 7A and 7B described in the specification appeared to have been omitted. In response, the present petition was filed, asserting the presence of the drawings on filing via either an incorporation by reference statement or a concurrently filed preliminary amendment incorporating by reference the priority documents.

The petition is dismissed.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

The PTO file is the official record of the papers originally filed in this application. A review of the official file confirms that no drawing sheets containing figures 2A-2C, 3B, 7A and 7B were filed on February 13, 2004, since no such drawings are present in the file. Petitioners do not provide evidence, such as an itemized postcard receipt, that the omitted figures were among the papers present in the application on filing.

Moreover, omitted drawings are not considered present in the application on filing by virtue of either an incorporation by reference statement or a priority claim. See MPEP 201.06(c).

Nonetheless, with a proper incorporation by reference statement, applicants may amend an application to include omitted drawings. However, no petition under 37 CFR 1.182 is necessary for that purpose. New drawings may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See MPEP § 608.02(a).

Accordingly, the petition is inappropriate and is subject to dismissal.

It is noted that the application transmittal letter identified this application as a divisional of prior application No. 09/892,879 and specifically incorporated by reference the disclosure of the prior application. MPEP 201.06(c) states that:

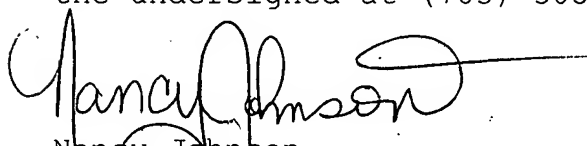
. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. . . . The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, the drawing of Figures 2A-2C, 3B, 7A and 7B are not new matter if they were a part of the disclosure of the prior application.

A preliminary amendment requesting the entry of the sheets of drawings, containing figures 2A-2C, 3B, 7A and 7B (supplied June 10, 2004), should be filed prior to the first Office action on the merits.

The application will be processed by the Office of Initial Patent Examination with a filing date of February 13, 2004, including an indication in Office records that 8 sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-0309.

  
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Office of Petitions